

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

THE ESTATE OF NENA CHARLEY, By and Through
Personal Representative TIMOTHY CHARLEY;
TIMOTHY CHARLEY, as Parent and Next Friend of
Nile Charley; and TIMOTHY CHARLEY, Individually,

Plaintiffs,

vs.

1:22-cv-00033 JB/JFR

GALLUP INDIAN MEDICAL CENTER,
Department of Health and Human Services,
Indian Health Service; THE UNITED STATES
OF AMERICA; ROBERT LEACH, D.O.;
ROBIN RANELL SALES, RN; and
JOELLE CATHERIN CERO GO, RN,

Defendants.

DECLARATION OF CARL MITCHELL

1. I am the Director of the Division of Regulatory and Policy Coordination (DRPC), Office of Management Services, in the headquarters of the Indian Health Service (IHS), a sub-agency of the U.S. Department of Health and Human Services. In this role, I manage a staff of 10 employees. Through this role, I am either personally familiar with the promulgation of IHS policy and regulations, including those found in the Indian Health Manual, and/or I supervise the individuals with direct knowledge of these topics and have relied on their personal knowledge in making this declaration.

2. DRPC has responsibility for questions affecting policy and regulatory matters as they affect implementation, management, and administration of IHS programs. Among other things, the DRPC performs regulatory and policy analysis and coordinates clearance of policy and regulations throughout the IHS.

3. The Indian Health Manual is a reference for IHS employees regarding IHS-specific policy and procedures. It consists of Parts and Chapters which represent final policy determinations of the IHS. It is supplemented by IHS Circulars and Special General Memoranda. IHS Circulars are used to issue temporary IHS operating policy. Special General Memoranda are used to interpret existing policy or to announce new IHS policy that must be implemented immediately.

4. When new policy is issued, it is accompanied by a Transmittal Notice which includes background information on the new or revised policy, information on materials that are superseded by the issuance of the new policy, and filing and disposition instructions. Transmittal Notices are issued under the signature of the Director of the IHS.

5. DRPC is involved in developing, clearance, and distribution of all of the documents discussed in paragraphs 3 and 4. Consequently, either I or my staff have personal knowledge regarding these types of documents.

6. The current medical credentials and privileges policy of the IHS is set forth in Chapter 1, Part 3 of the Indian Health Manual, entitled "Medical Credentials and Privileges Review Process." This document was published on November 19, 2008, and to date has not been superseded. A copy of this Chapter is attached hereto as Exhibit 1.

7. The associated Transmittal Notice for this document is Transmittal Notice 08-19. The Transmittal Notice sets forth that the November 19, 2008, policy supersedes the prior policy Chapter that was issued on October 6, 2006, Transmittal Notice 2006-20. It is signed by IHS Director Robert G. McSwain. A copy of this transmittal is attached hereto as Exhibit 2.

8. Transmittal Notice 2006-20 sets forth a prior version of Chapter 1, Part 3 of the Indian Health Manual. The Transmittal Notice states that this prior version supersedes IHS Circular No.

95-16, "Credentials and Privileges Review for the Medical Staff", dated December 8, 1995, and IHS Circular No. 96-06, "Errata Notice – IHS Circular 95-16", dated June 5, 1996. It is signed by IHS Director Charles W. Grim, D.D.S. A copy of this transmittal is attached hereto as Exhibit 3.

9. I have been asked to review a document filed in this litigation, ECF 34-2, as an exhibit asserting that it represents the current medical credentialing and privileging policy of the IHS. This document has a date on the bottom of 00/00/2017, and references a Transmittal Notice of 17-XX. A copy of the document that I reviewed is attached hereto as Exhibit 4.

10. Throughout 2017 and 2018, a workgroup in the Office of Clinical and Preventative Services (OCPS) at IHS began to work on revising and updating the credentialing and privileging policy. The document attached as Exhibit 4 is an excerpt of the draft version of the policy that was circulated in or around October 2017. At the time, the document was pre-decisional and had not been submitted to decision makers for final approval and transmittal as official IHS policy.

11. In August 2018, the draft policy was returned by DPRC to OCPS without the policy having been approved by the IHS Director. As such, the document in Exhibit 4 is not an official policy of the IHS.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. 28 U.S.C. § 1746.

Executed on this 5th day of August, 2022.

Carl G.
Mitchell -S

Digitally signed by Carl G.
Mitchell -S
Date: 2022.08.05 11:29:36
-04'00'

CARL G. MITCHELL
Director, Division of Regulatory and Policy Coordination
Office of Management Services
Indian Health Service